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South Carolina House of Representatives

Legislative Update

David H. Wilkins, Speaker of the House

Vol. 12

March 28, 1995

No. 11

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House Week in Review

The issue of property tax reform dominated the General Assembly's legislative business last week. On Wednesday, by special order, the House took up a property tax measure, H. 3651. Much of the debate over this proposal centered around an amendment to raise the state sales tax from 5 percent to either 6 or 7 percent, with the increased sales tax revenue used to eliminate property taxes on owner-occupied residences. Proponents argued that this was an equitable way to provide property tax relief and that constituents wanted immediate, not phased-in, relief. Opponents, however, claimed that residents wanted tax relief, not tax shifting, and raised concerns as to how the sales tax revenue would be distributed back to local government. By narrow margins, the House rejected attempts to raise the sales tax to provide further property tax relief. Following extensive speeches and debate for and against this bill, H. 3651 was given second reading by the House on Thursday afternoon, by a vote of 102 to 14. Under this proposal, the first phase of property tax relief must be used to remove property taxes levied on homeowners for school operating expenses, and after June of 1996, one-half of recurring state revenue growth must be appropriated for residential property tax relief until that property tax is completely phased out. Local governments must be reimbursed by the State for amounts not collected because of this property tax exemption. The bill also requires a supermajority vote of local governing bodies to increase millages and fees (except for utilities), with a 3/5 vote of the governing body required to raise the millage and fees by the increase in the Consumer Price Index and a 2/3 vote of the governing body required to increase millage and fees above the CPI or impose new sources for operating revenues.

On Tuesday, the General Assembly convened in joint session to elect justices and judges to the Supreme Court, Court of Appeals and Circuit Court. By a vote of 102-60, legislators elected the Honorable E.C. Burnett as an associate justice of the Supreme Court. Mr. Burnett currently is a circuit court judge of the 7th Judicial Circuit---Cherokee and Spartanburg Counties (7th Judicial Circuit). (Last May, legislators elected Court of Appeals Judge Randall Bell to the Supreme Court, but Mr. Bell died shortly after the election; thus this position had been vacant since last summer.) Legislators then elected Family Court Judge Kaye Hearn to Seat 3 of the Court of Appeals (to the seat left vacant by the death of Judge Bell) and re-elected the Judge Tolbert Goolsby Jr. to another 6 years on Seat 4 of the Court of Appeals. Other judges elected last week were as follows:

5th Judicial Circuit.....J. Ernest Kinard, Jr.*

(Kershaw and Richland Counties)

7th Judicial Circuit.....J. Derham Cole*

(Cherokee and Spartanburg Counties)

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9th Judicial Circuit.....Daniel E. Martin, Sr.*
(Berkeley and Charleston Counties)
10th Judicial Circuit.....Thomas J. Ervin*
(Anderson and Oconee Counties)
12th Judicial Circuit.....B. Hicks Harwell, Jr.
(Florence and Marion Counties)
Administrative Law Judge Div. (Seat 3)....Allison Lee*
Administrative Law Judge Div. (Seat 5)....Ray Stevens

(NOTE: the asterisk * denotes an incumbent)

The General Assembly also convened in joint session on Wednesday to honor persons of the Easter Seal Society involved in raising money for persons with disabilities and later to hear a speech given by the Honorable William Detweiler, the National Commander of the American Legion. In his address, Mr. Detweiler praised the State for its support of veterans' organizations, expressed concern over possible federal budget cuts in veterans' programs, and expressed support for a constitutional amendment to prohibit desecration of the American flag. He also discussed the emerging controversy concerning the upcoming 50th anniversary of the dropping of the atomic bombs on Japan during World War II, stating that the United States "owes no apology" for dropping the bombs and claiming these acts saved the lives of countless number of American troops.

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Bills Introduced

The following bills were introduced in the House on March 21, 22 and 23. Not all bills introduced in the House are summarized in this Update. The bill summaries are arranged according to the committee to which the legislation was referred.

AGRICULTURE, NATURAL RESOURCES AND ENVIRONMENTAL AFFAIRS

Regulation of Seasons and Fishing Activities in Saltwaters (H. 3833, Rep. Witherspoon). This bill allows the Department of Natural Resources to establish open and closed seasons, areas and fishing periods and prescribe limits and methods of taking fish in the State's saltwaters. In prescribing these limits, the Department must consider factors such as environmental factors and biological data. Violation of these provisions is a misdemeanor, punishable upon conviction as follows:

1st Offense: Fine of between \$25 and \$200 or imprisonment of between 10 and 30 days;

2nd Offense: Fine of between \$50 and \$200 or imprisonment of between 20 and 30 days;

3rd Offense: Fine of between \$100 and \$500 or imprisonment of between 60 days and 6 months.

Additionally, upon a second or subsequent conviction, the violator's boat, motor and fishing equipment must be confiscated and disposed of.

Clemson University Livestock-Poultry Health Division Must Establish a Quarantine for Laryngotracheitis (H. 3859, Rep. Riser). This joint resolution directs the Clemson University Livestock-Poultry Health Division to establish a quarantine for laryngotracheitis (a highly infectious and contagious poultry disease). Under these provisions, the quarantined areas include counties outside this State where official quarantines have been imposed as designated by the State Veterinarian, who also may revise these designated areas. Quarantined items include poultry, uncooked poultry by-products, poultry waste products, shipping containers and means of transportation by which the disease is spread.

The joint resolution prohibits quarantined items from the quarantined areas from entering in South Carolina, except in limited circumstances (such as if the poultry is accompanied by certificates of veterinary inspection), and anyone transporting these quarantined items from other states and into

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South Carolina must provide, if requested by law enforcement officers or agents of the State Veterinarian, the address and telephone number of the premises of origin and the destination of the quarantined items. Violation of these provisions is a misdemeanor, punishable upon conviction as follows: (1) first offense: Maximum fine of \$500 or imprisonment not exceeding 30 days; (2) second offense: Fine not exceeding \$5,000 or imprisonment not exceeding 3 years. The quarantine and the provisions associated with it in this joint resolution are in effect through June 30, 1996.

EDUCATION AND PUBLIC WORKS

Lower Annual Fee for Nongame Wildlife and Natural Areas Special License Plates (H. 3824, Rep. Baxley). Current law provides for the issuance of special license plates for the "Nongame Wildlife and Natural Areas Fund," with the annual fee (in addition to the regular motor vehicle registration fee) for this special plate being \$27, of which \$12 is placed in the Nongame Wildlife and Natural Areas Fund. This bill would lower the annual fee for this special plate to \$12 for the first 2 years and \$5 for each year after that time, with all proceeds from this plate going to that fund.

Restrictions on Road Training of Enrollees in Driver Training Schools (H. 3825, Rep. Rice). This bill prohibits a licensed driver training school or any other person, entity or school conducting driver training which is not required to be licensed from conducting on-the-road training of its enrollees within a 1 mile radius of (a) a building from which driver's license road tests are conducted, or (b) any part of the road test course used by state driver's license examiners.

Misuse of Motor Vehicle Titles (H. 3834, Rep. Huff). Current law makes it a misdemeanor for a person to wilfully fail to (1) mail or deliver a certificate of title or application therefor to the Department of Revenue or Taxation, or (2) deliver to his transferee a certificate of title, within 10 days after the time required in the State's motor vehicle titling laws. This bill would increase from 10 days to 45 days the period before this offense would apply.

Expulsion of Students Who Bring Weapons to Schools (H. 3855, Rep. Townsend). This bill requires a school district board of trustees to expel for at least 1 year any student who is determined to have brought a firearm to a school or any setting under the jurisdiction of that local board. Prior to expelling the student, the board must hold a hearing at which the student's parents or legal guardians have the right to legal counsel and the right to question witnesses concerning the incident. The one-year expulsion may be modified by the district superintendent of education on a case-by-case basis. Students expelled pursuant to these provisions are not precluded from receiving educational services in an alternative setting. The bill also requires each local board of trustees to establish a policy under which the

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expelled student must be referred to the local county office of the Department of Juvenile Justice or its representatives.

Leadership Assessments and Standards for School Administrators (H. 3856, Rep. Townsend). Current law sets a number of requirements concerning performance and leadership assessments and standards for school administrators. As examples, persons being considered for appointment as a principal must be assessed for their leadership and management capabilities by the State Department of Education, and the State Board of Education is required to adopt criteria and minimum performance standards for evaluation of principals. This bill deletes a number of current assessment requirements, replacing them with new provisions, as follows:

---Requires, beginning with school year 1995-1996, anyone appointed as a principal for an elementary or secondary school or vocational center to be assessed for instructional leadership and management capabilities by the Assessment Center of the State Department of Education, with a personal professional development plan to be constructed based on the assessment prior to or within a year of the date of the appointment. A report of the assessment must be forwarded to the district superintendent.

---Requires school administrators to develop annually or update an individual professional development plan appropriate for their role or position, with the plan supporting both their individual growth and organizational needs. Organizational needs must be defined by the districts' strategic plans or school renewal plans, and the Department of Education must assist school administrators by providing or brokering programs and services in the area of professional development.

---Provides that the governing board of the local school districts is responsible for evaluating school superintendents, while evaluation of all other school administrators is the responsibility of the superintendent or his designee. Requires evaluation of school administrators to be in part related to their individual professional development plan and the successful implementation of either the district strategic plan or school renewal plan. Also requires the State Board of Education, through the Department of Education, to develop guidelines to assist and provide services to districts as pertains to evaluation of school administrators.

---Requires all teachers annually to develop and participate in an individual professional development plan appropriate for their contract level, with this plan supporting both their individual growth and organizational needs. Organizational needs must be defined by the districts' strategic plans or school renewal plans.

JUDICIARY

Additional Judges for Court of Appeals, Circuit Court and Family Court (H. 3841, Rep. Sheheen). This bill increases the number of judges on the state's various courts, as follows:

(1) Court of Appeals: Increases the number of associate judges from 5 to 8, so that (with the Chief Judge included) the size of this court increases from 6 to 9. These additional judges would serve staggered 6-year terms, with the judge elected to seat 7 serving an initial term of 2 years, the judge elected to seat 8 serving an initial term of 4 years, and the judge elected to seat 9 serving an initial term of 6 years. Also, concurrence of 6 judges (as currently opposed to 4) is required for the court to sit en banc to hear cases.

(2) Circuit Court: Increases the number of Circuit Court judges from 40 to 43, with an additional judge each elected from the 5th Circuit (Kershaw and Richland Counties), 13th Circuit (Greenville and Pickens Counties), and 15th Circuit (Georgetown and Horry Counties).

(3) Family Court: Increases the number of Family Court judges from 46 to 49, with an additional judge each elected from the 5th Circuit, 14th Circuit (Allendale, Beaufort, Colleton, Hampton and Jasper Counties) and 15th Circuit.

If adopted, these provisions would take effect July 1, 1995, although the bill allows the General Assembly to elect these additional judges during the current (1995) legislative session.

Unlawful To Threaten Life of a Person Officiating at School Athletic Events (H. 3842, Rep. Cromer). Current law prohibits anyone from threatening to take the life or inflict bodily harm on public officials, teachers, principals or their immediate families, an offense punishable upon conviction by imprisonment of not more than 5 years. This bill would expand that prohibition, so as to make it unlawful to threaten persons officiating at an athletic event of an elementary or secondary school.

Collection of Fees and Costs by Clerks of Courts and Other Officials (H. 3844, Rep. Cromer). Current law mandates the amount of fees clerks of court, registers of mesne conveyances and county treasurers must collect for recording and filing various documents and notices. This bill requires these officials to collect \$5 for receiving and enrolling transcripts of judgment from any source (as currently opposed to collecting that amount for receiving and enrolling such transcripts solely from Magistrates' Courts and Federal District Courts) and increases from \$2 to \$5 the fees collected for filing or recording commissions of notary publics or other public offices, licenses or permits to practice a profession or trade, or notices of formation of dissolution of a partnership.

Jury Lists To Be Furnished Every Third Year (H. 3845, Rep. Cromer). Current law requires the State Election Commission each December to furnish

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a jury list to county jury commissioners, with this list consisting of a list derived by merging the list of registered voters in the county with another list, as provided yearly by the Department of Revenue and Taxation, of persons in the county who hold a South Carolina driver's license or identification card. This bill would require the jury list to be prepared every three years, beginning October 1995 and every 3 years thereafter, with the Department of Revenue and Taxation also required every three years, beginning this September, to furnish the State Election Commission with information on persons in each county holding driver's licenses or identification cards.

Appointment of Bailiffs (H. 3846, Rep. Cromer). This bill deletes provisions which currently allow sheriffs to appoint bailiffs.

Payment of Costs for Hearing and Determining Property Damage Claims (H. 3847, Rep. Cromer). Current law requires the Court of Common Pleas or inferior courts having concurrent jurisdiction in and for each county to appoint an attorney or attorneys as arbitrators to hear and determine property damage liability claims arising out of motor vehicle accidents and to award actual and punitive damages. This bill would impose a cost of \$150 for hearing and determining these property damage liability claims by arbitration, with the cost paid by the parties involved in the claim.

Information To Be Included on Assignment of Mortgage Forms (H. 3848, Rep. Cromer). This bill requires assignment of mortgage forms to include the name and address of the mortgagor and the mortgagee, along with the book, page and date of recording of the original mortgage.

Family Court May Suspend or Restrict Driver's License of Child Adjudicated Delinquent and in Other Circumstances (H. 3858, Rep. Bailey). This bill allows the Family Court to suspend or restrict a child's driver's license if the child is adjudicated delinquent for various offenses or violates other provisions, as follows:

(a) For child adjudicated delinquent for a status offense or found to be in violation of a court order relative to that offense: Court may suspend or restrict the license until the child's 17th birthday.

(b) For child adjudicated delinquent for violation of a criminal offense, or found to be in violation of [1] a court order relative to a criminal offense, or [2] a term or condition of probation: Court may suspend or restrict the license until the child's 18th birthday.

If the court suspends the child's license, then the child must submit the license to the court, with the court then forwarding the license to proper authorities for license suspension. If the court restricts the child's license, the court may restrict the child's driving privileges to driving only to and from school or work as the court considers appropriate. Upon the court's restriction of the child's license, the child must submit the license to the court, which in turn must forward the license to proper authorities for reissuance of the license, with the restriction noted.

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Procedures for the Enforcement of Child Support Through Revocation of Drivers' Licenses (H. 3860, Rep. Limehouse). This bill provides for the revocation of driver's licenses of persons who are not in compliance with court-ordered child and/or spousal or former spousal support. For purposes of these provisions, a person is not in compliance with an order for support if he is in arrears by more than an amount equal to two month's support obligation. The bill requires the Department of Revenue and Taxation and the Department of Public Safety (hereafter called "licensing entity") to provide to the Child Support Enforcement Division of the State Department of Social Services information on licensees (such as name, place of employment, etc.) for use in establishing, enforcing and collecting child support obligations. In reviewing this information, if the Division determines the licensee is out of compliance with a support order, then the Division must notify the licensee that his license will be suspended 90 days after provision of this notice unless he pays the arrearage owed under the order or signs a consent agreement establishing a schedule for payment of the arrearage. The division director or his designees are authorized to negotiate with a licensee to establish a payment schedule for the arrearage. If the licensee and Division do not reach an agreement setting a schedule for payment of the arrearage, then the licensee may petition the court to establish a payment schedule, though this action does not stay the license revocation procedures. The driver's license may only be reinstated if the Division notifies the licensing entity that the licensee (1) no longer has an arrearage, or (2) has signed a consent agreement.

The bill allows the licensee to appeal his revocation under the entity's license revocation procedures; however, on appeal the licensee is limited to the issues of whether he is the individual required to pay under the order for support and whether he is not in compliance with the order for support. If the licensee enters into a consent order pursuant to these provisions but subsequently becomes out of compliance with an order for support, his license also may be revoked. The bill also provides that a licensee's filing for a petition for modification of a support order or other applicable relief does not stay the license revocation procedure.

Information concerning revocation of licenses for arrearages in these support payments, as provided to the licensing entity, is subject to disclosure pursuant to the Freedom of Information Act. Anyone releasing such information as received by the licensing entity, except as authorized by these provisions or other provisions of law, is guilty of a misdemeanor, punishable upon conviction by a fine of not more than \$1,000 and/or imprisonment not exceeding 1 year. The bill also allows the State Department of Social Services to enter into interagency agreements with the licensing entity to provide for receipt of federal funds by the licensing agency to cover the portion of costs allowed by federal law and regulation and incurred by the licensing entity in providing licensee information to DSS and revoking licenses for arrearage in support.

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Procedures for Conducting Wiretapping and Electronic Surveillance (H. 3861, Rep. Fleming). This bill establishes procedures for the conducting of wiretapping and electronic surveillance in South Carolina.

The bill makes it a felony, punishable upon conviction by imprisonment not exceeding 5 years, if a person wilfully:

(a) intercepts, tries to intercept, or procures another person to intercept or try to intercept any wire or oral communication;

(b) discloses, attempts to disclose to another person the contents of any wire or oral communication, or uses or tries to use the contents of any wire or oral communication, knowing or having reason to know that the information was obtained through interception of a wire or oral communication.

The bill also lists exceptions to this prohibition. As examples, police and emergency communications systems may record telephone conversations coming into or going out of the system of a police or fire department or county emergency center; law enforcement officers or persons acting at their direction may intercept wire or oral communications involving suspected criminal activities; and personnel of public utilities may record telephone conversations with utility customers or the public as pertains to receiving and dispatching emergency and service calls. The bill lists requirements these and other entities must meet when authorized to intercept or release contents of these communications.

The bill, except in limited circumstances, also makes it a felony, punishable upon conviction by imprisonment not exceeding 5 years, for a person to possess, sell, transfer, distribute, manufacture or assemble an intercepting device if he knows or has reason to know that the design of the device renders it primarily useful for the purpose of secretly intercepting a wire or oral communication. It is also a felony to place an advertisement for these devices if the person knows or has reason to know it is for the purpose as listed above or if the advertisement promotes the use of a device for such purpose. However, employees of common communication carriers (in the course of their normal business), and persons under contract with federal, state or local government, along with officers, agents and employees thereof, may possess, sell, manufacture, etc. these intercepting devices while acting in furtherance of appropriate activities of these governments or the communication common carrier.

These provisions list guidelines for use of intercepting devices by law enforcement officers. Under this bill, such officers may use these devices when there is probable cause to believe that a person is committing or has committed an act which endangers national security of the security of South Carolina, is committing or has committed certain crimes (such as espionage, felony involving bodily harm, kidnapping, racketeering activity, etc.), or when there is probable cause to believe that a private place is being utilized or has been utilized for commission of these crimes. A circuit court judge may issue a warrant permitting use of an intercepting device for surveillance of a person or place upon written application by the solicitor of the circuit where the device is to be placed, or the attorney

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general, which affirms there is probable cause to believe that a person is committing or has committed these crimes, or a private place has been or is being used for such crimes, and setting forth the basis of probable cause (describing the person or place, crime or crimes, device to be used, and specific conversations and activities to be overheard or observed). These warrants are valid for a maximum of 30 days but may be renewed for a 20-day period for good cause shown. The law enforcement officer executing the warrant must return it to the judge with information on how the warrant was used and what was obtained, with the return required to reflect that the investigation or search was terminated immediately upon the conversation or activities which were authorized to be overheard, intercepted or observed were obtained. If no evidence of one of these crimes has been obtained through use of an intercepting device, then the applicant must destroy all evidence obtained by surveillance and certify that fact to the judge under oath.

The bill requires communication common carriers, landlords, and others who furnish facilities or technical assistance for lawful interception of these communications to be compensated by the person seeking to use these devices. The bill also allows an aggrieved person to move to suppress contents of an intercepted wire or oral communication, or evidence derived from it, on grounds that the communication was unlawfully intercepted, the warrant was insufficient on its face, or the interception was not made pursuant to the warrant or other requirements of this act.

Also under these provisions, the attorney general and the chief of the State Law Enforcement Division must establish a course in training in the legal and technical aspects of wiretapping and electronic surveillance, and must also establish regulations for the training program and minimum standards for certification/recertification of law enforcement officers eligible to conduct wiretapping or electronic surveillance under these provisions.

Reference to Federal Bankruptcy Code (H. 3864, Rep. Quinn). This bill revises a reference to cited provisions of the Federal Bankruptcy Act, so as to specify that property specified 11 U.S. Code Section 522(d) (as currently opposed to "Section 522[d] of the Bankruptcy Reform Act", or Public Law 95-598) may not be exempted from bankruptcy proceedings.

Penalties for Failure To Return Certain Items (S. 97, Sen. Hayes). Current law provides that a person is guilty of larceny if he wilfully fails to return a motor vehicle, trailer, appliance, equipment or tool (hereafter called "item") within 72 hours after expiration of the lease or rental agreement on the item (with this offense being a felony if the value of the item rented or leased is more than \$1,000 and a misdemeanor if the value is \$1,000 or less). This bill would make a person guilty of larceny if the item is not returned after 7 days from the date of expiration of the lease or rent. Additionally, this bill would establish a separate offense as pertains to failure to return these items, such that a person who fails to return the item within 72 hours after expiration of the lease/rental

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agreement but who returns it within 7 days of expiration of such agreement would be guilty of a misdemeanor, punishable upon conviction by a fine not exceeding \$500, or imprisonment not exceeding 30 days, or both fine and imprisonment.

Department of Social Services Must Provide Reports of Persons Delinquent in Child Support Payments for Two Consecutive Months (S. 136, Sen. Short). This bill requires the Department of Social Services (DSS) to provide automated monthly reports to consumer credit reporting agencies of persons (or obligors) in Title 4-D cases who have not made child support payments for 2 consecutive months. DSS must establish procedures for notice and an opportunity for a review for obligors who contest the submission to the consumer credit reporting agency, with the procedures limiting review to a dispute concerning the identity of the obligor or the existence or amount of the arrearage.

LABOR, COMMERCE AND INDUSTRY

Auto Insurance Reform (H. 3827, Rep. Cato). This bill revises provisions of the state's auto insurance laws, as follows:

---Requires, beginning January 1, 1996, and annually thereafter, that the final rate or premium charge for private passenger auto insurance risks ceded to the Reinsurance Facility (hereafter called "Facility") must be calculated so that the projected combined ratio for risks subject to the final rate is not more than 100 percent. The final rate or premium charge must be filed by the Facility with the director for approval. In calculating the final rate or premium charge, it must be based upon the combined ratio of all insurers ceding private passenger auto insurance risks to the Facility.

---After June 30, 1995, and annually thereafter, the Board of Governors of the Facility must authorize a licensed rating organization approved by the director to file with him an expense component for private passenger auto insurance rate or premium charges, and a pure loss component for such insurance written by insurers designated by the insurance commissioner to serve certain areas, for risks written by them through designated producers. Upon approval of those components, auto insurers designated to serve certain areas, for risks written by them through designated producers, must utilize these final rate or premium charges, provided that the final rate or premium charges must be discounted from actuarially indicated rates so that the projected combined ratio for risk subject to final rate of premium charges is 115 percent. The rate adjustment must occur evenly over a 4-year period, and Facility recoupment charges must be reduced to the extent of resulting reductions in facility operating losses.

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---Allows member companies of an affiliated group of auto insurers to utilize different filed rates for coverages which they are mandated by law to write, in accordance with rating plans filed with and approved by the director of the Department of Insurance. Each member of a group of affiliated insurers is not considered a separate insurer for purposes of compliance with laws governing the writing, cancellation or renewal of an auto insurance policy.

---Makes it optional, instead of mandatory, for auto insurers to offer collision, comprehensive, fire, theft, or combined additional coverage.

---Requires insurers writing single interest collision coverage to provide a separate notice concerning such coverage to a person obtaining that coverage. (For these purposes, "single interest collision coverage" is an auto insurance policy used in connection with an auto sold on the installment plan or financed by a lender, and this coverage solely protects the outstanding balance due to a creditor or lender advancing money to the borrower to purchase the car.)

---Contains antidiscriminatory provisions, prohibiting race, color, creed, religion, economic status, etc. from being considered in determining premium rates for auto insurance. The director of the Department of Insurance or his designee may fine an insurer up to \$200,000 for violating these antidiscriminatory provisions. Also requires the director or his designee to compile an analysis of persons for whom physical damage coverages are written and for those who are denied such coverage, and complaints alleging discrimination when denied physical damages coverage, indicating data for race, sex, range of income levels, etc. and reporting this information to the General Assembly annually.

---Allows designated producers, upon notification to the governing board of the Facility, to contract with a voluntary market for any type of auto insurance cedeable to the Facility.

---Allows, beginning January 1, 2001, an auto insurance insurer or a group of insurers under the same management to cede up to and including 100 percent of total direct cedeable premiums on South Carolina auto insurance as reported in the most recently-filed annual statement of the insurer or group. Provides transition for purposes of ceding premiums to the facility; currently, unreasonable utilization of the facility is established when the insurer or group of insurers under the same management cedes more than 35 percent of total direct cedeable premiums on auto insurance in this state. This bill increases that percentage to 50 percent in 1998; 65 percent in 1999; and 80 percent in 2000.

---Allows insurers of private passenger auto insurance and individual members of rating organizations to elect to file private passenger auto insurance rates under the "Index File and Use" rating methodology. Under this system, when insurers file proposed rates or premium charges, they must certify that the average of the overall change in the proposed rates or

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premium charges for all classes, territories and coverages is equal to or less than the average annual change for the previous 12 months in the Consumer Price Index Medical Care, Monthly Labor Review Gross Weekly Earnings, and Producer Price Index Motor Vehicles and Equipment, all published by the U.S. Department of Labor. Filings meeting these requirements are considered approved after being on file with the Department for 60 days. If, however, the director of the Department or his designee finds that the rates considered approved produce excess profits, he may order a reduction in the rates and order rebates, with the amount of rates subject to rebate being no more than the difference between the filed rates as approved and what the rates would have been using only the Consumer Price Index.

Enforcement of Physical Fitness Services Contracts (H. 3852, Rep. Fair). Under these provisions, a physical fitness services contract is unenforceable if the contract does not comply with state or federal law. Additionally, no purchaser of a note associated with or contained in a physical fitness services contract may attempt to collect on the note or to report the buyer as delinquent to a consumer reporting or consumer credit reporting agency if that contract violates the State's Physical Fitness Services Act. The bill also revises financial requirements for physical fitness centers; currently, facilities in operation for 5 or more years on the effective date of the Physical Fitness Services Act are exempt from these financial requirements (i.e., maintenance of a surety bond or information demonstrating financial responsibility) Under this bill, however, the financial requirements would not apply to physical fitness service facilities in operation for 10 or more consecutive years in South Carolina under the same sole ownership or corporate ownership by the same principals at the time of renewal for its certificate of authority.

Changes to Health Maintenance Organization Act (S. 238, Sen. Leatherman). This bill makes several changes concerning the State's Health Maintenance Organization Act, as follows:

---Changes the definition of "copayment" or "deductible" so as to provide that this amount may be stated as a percentage of the negotiated reduced rate of the provider.

---Provides that a health maintenance organization (HMO) that issues an HMO contract requiring the enrollee to pay a specified percentage of the cost of covered health care services to calculate those copayments and deductibles on the negotiated reduced rate of the provider. Also requires insurers which negotiate reduced rates with providers for covered health care services under an individual or group accident and health insurance policy to provide that percentage copayments and deductibles paid by the insured are applied to the negotiated reduced rates of that provider.

---Requires schedule of charges applicable to individual HMO contracts to be filed with and approved by the director of the Department of Insurance or his designee before being the schedule may be used. The director or

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designee can disapprove the schedule of charges if the benefits provided in the contracts are unreasonable in relation to the charges. The charges are deemed to be approved if no action has been taken either to approve or disapprove them after having been filed for 90 days. Also allows the director or his designee to withdraw approval of a schedule of charges previously approved or an evidence of coverage already approved upon determination that the schedule of charges or evidence of coverage no longer meet the standards for approval.

Reporting of Unclaimed Property (S. 296, Sen. Hayes). Under current law, no more than 120 days before filing a report on unclaimed property with the Department of Revenue and Taxation, the holder possessing property presumed abandoned and subject to custody as unclaimed property under the State's Uniform Unclaimed Property Act must send written notice to the apparent owner informing him that the holder is in possession of the property. This bill requires the written notice to be sent by certified mail, with return receipt, in the case of demand, savings or matured time deposits with banking or financial institutions presumed to be abandoned.

MEDICAL, MILITARY, PUBLIC AND MUNICIPAL AFFAIRS

Persons Under Age 15 May Not Stand or Sit in Open Bed of Pickup Truck (H. 3843, Rep. Cromer). This bill prohibits, except in limited circumstances, anyone under age 15 from standing or sitting in the open bed of a pickup truck or trailer while traveling faster than 25 mph on a public road or highway. The operator of a motor vehicle who permits a person to ride in the back of the pickup truck or trailer in violation of these provisions is guilty of a misdemeanor, punishable upon conviction by a fine of not more than \$2,500, or imprisonment not exceeding 30 days, or both fine and imprisonment. This prohibition, however, does not apply when the vehicle is being used for hunting, is operated in an agricultural enterprise, or is operated in an organized hay ride or parade.

Abortion Prohibited Except in Cases of Rape or Incest or when Life of Mother Is Endangered (H. 3849, Rep. Wofford). This bill would prohibit abortions except in cases of rape or incest or to save the life of the mother.

Reserve Officer Detention Program (S. 362, Sen. Cork). This bill authorizes the appointment of "reserve detention officers" (hereafter called "reserves"), defined as anyone assigned part-time jailer or detention officer duties without being assigned to full-time jailer or detention officer duties and who serves without compensation in that capacity. Under these provisions, the person (such as a jail administrator) responsible for management of a particular local detention facility may appoint the number of reserve detention officers as approved by a sheriff, city administrator or other appropriate official, so long as participation in this reserve program has been approved by the governing body having jurisdiction over the

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detention facility. The number of reserves appointed may not exceed the number of full-time jailers or detention officers funded and employed at the facility, and the number of full-time jailers or detention officers cannot be reduced because of institution or expansion of a reserve force. Powers and duties of a reserve must be prescribed by the facility manager and approved by the sheriff, city manager or other appropriate authority.

The bill lists several requirements a person must meet to qualify as a reserve. Applicants must undergo a criminal history inquiry; be bonded in an amount determined by the local governing body (in an amount not less than \$1,500); submit to a physical examination; complete a jail pre-service training program approved by the Department of Public Safety and pass a comprehensive test prepared by the South Carolina Criminal Justice Academy. Within 1 year of appointment, the reserve must successfully complete a jail operations training program promulgated by the Department of Public Safety in order to be eligible for continuation as a reserve, and reserves serving more than 1 year must complete the same annual in-service training requirements as regular full-time jailers or detention officers. Local political entities may impose additional requirements as well. A reserve may function as a jailer or detention officer only upon specific orders and directions of the facility manager, and in order to maintain status, the reserve must perform a minimum logged service time of 10 hours a month or 30 hours per quarter. A reserve may not perform any jailer or detention officer duties except under direct supervision of a full-time jailer or detention officer. Reserves must wear uniforms identifying them as jailers or detention officers and may be provided workers' compensation benefits by the governing body, in the same manner as benefits are provided for full-time jailers or detention officers.

The bill also lists requirements by which reserves must abide if they wish to become full-time jailers or detention officers and if full-time jailers or detention officers wish to enter reserve status.

WAYS AND MEANS

Conformance of South Carolina's Method of Imposing Excise Taxes on Motor Fuels to Federal Law (H. 3854, Rep. Boan). This is a "skeleton bill" which would conform South Carolina's method of imposing excise taxes on motor fuels to federal law.

Seafood Processing Facilities Included as Agricultural Real Property (H. 3857, Rep. Inabinett). This bill provides that for purposes of payment of property taxes, seafood processing facilities are considered agricultural real property.

WITHOUT REFERENCE

Bond Authorizations for Adjutant General and John de la Howe School (H. 3826, Rep. Carnell). This reduces the existing bond authorization for the Adjutant General's Greenville HAWK armory facility from \$930,070 to \$5,519, while increasing from \$577,200 to \$1,042,200 the bond authorization for other armory construction/renovation and increasing from \$1,248,014 to \$1,707,565 the bond authorization for a Family and Child Counseling Facility at the John de la Howe School.

Workers' Compensation Reforms (H. 3835, House Labor, Commerce and Industry Committee). This bill makes several changes to the State's Workers' Compensation Law, as follows:

---Provides that "average weekly wage" for purposes of this law must be calculated by taking total wages paid for the last 4 quarters immediately preceding the quarter when the injury occurred, as reported on the Employment Security Commission's Employer Contribution Reports, divided by 52 or the actual number of weeks for which wages were paid, whichever is less. Deletes provisions pertaining to calculations of earnings of injured employees losing more than a certain number of days during a period.

---Makes it unlawful for an authorized health care provider to actively pursue collection procedures against a workers' compensation claimant prior to final adjudication of the claimant's claim, with this violation resulting in a penalty of \$500 payable to the claimant. Also makes it a misdemeanor for a person to receive any fee or other consideration or any gratuity on account of services so rendered (unless approved by the Workers' Compensation Commission or such court) or to make it a business to solicit employment for a lawyer or for himself in respect of any claim or award for compensation. Upon conviction, the person, for each offense, must be fined not more than \$500, or imprisoned not more than 1 year, or both fined and imprisoned.

---Requires payment to an authorized health care provider for services to be made no later than 30 days from the date that provider tenders request for payment to the employer's representative, unless the commission has received a request to review the medical bill.

---Revises provisions concerning the reporting of workplace injuries to the commission. If an injury requires minimal medical attention at a cost not to exceed an amount specified by regulation of the commission and does not cause more than 1 lost workday or permanency, then the employer is not required to file a report with the Commission or their insurance carrier, if the employer maintains a record and pays directly the incurred cost of the resulting medical attention. An injury for which there is no compensable lost time or permanency and the medical treatment does not exceed that

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specified by Commission regulation must be reported annually to the Commission, while injuries involving lost time, medical attention in excess of the limit prescribed by Commission regulation or the possibility of permanency must be reported within 10 business days after the occurrence and knowledge of the injury. For injury of a member of the South Carolina National Guard, injury reporting periods must be counted from the date the employer, the South Carolina National Guard, has knowledge that the federal government has denied benefits to the injured guard member or that benefits or additional benefits may be due under the State's Workers' Compensation laws.

Compensation for Mental Illness Resulting from Work-Related Stress (H. 3836, House Labor, Commerce and Industry Committee). This bill provides that for purposes of compensation under the State's Workers Compensation Law, mental illness resulting from work-related stress is considered an accidental injury arising out of and in the course of employment only if there is clear and convincing evidence of all 3 of the following factors:

(1) the stressful employment conditions causing the mental injury were extraordinary and unusual in comparison to pressures and tensions experienced by individuals performing similar work;

(2) the stressful employment conditions were the predominant cause of the mental injury; and

(3) the mental injury was caused by stressful conditions that exist in a real and objective sense.

A determination of mental injury, its cause and resulting disability or need for medical treatment must be supported by clear and convincing psychiatric or psychological evidence.

The bill further provides that a mental injury is not considered compensable if it results from a verbal disagreement with an employer or coemployee, or results from an employer's personnel decision (such as work evaluation, salary review or termination of employment).

Temporary Disability Payments (H. 3837, House Labor, Commerce and Industry Committee). Under these provisions, when an employee has been out of work for 8 days because of a reported work-related injury or occupational disease, an employer may begin temporary total disability payments immediately and may continue these payments for up to 120 days without waiver of any grounds for denial of a claim following a good faith investigation.

The bill also provides conditions for immediate termination or suspension or payment of temporary disability benefits. Under these provisions, such payments may be terminated or suspended immediately if the employee has returned to work or agrees he is able to return to work and executes a form indicating such ability to return to work. Furthermore, payments can be terminated or suspended during the 120-day period if a good faith investigation reveals grounds for denial of the claim. The bill further provides for termination or suspension of these benefits if:

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(1) the employee has been released by the treating physician to work, and the employer provides work consistent with the terms upon which the employee has been released, but the employee refuses to return to work;

(2) the employee has been released by the treating physician to limited duty work, and the employer provides limited duty work consistent with terms upon which the employee has been released, but the employee refuses to accept this limited duty work or to return to work.

Additionally, an employee who refuses medical treatment or an examination or evaluation is not entitled to compensation benefits during the period of such refusal, with compensation subject to termination upon submission of documentation of the employee's refusal of the medical treatment, examination or evaluation. However, an employee may request a hearing to have temporary compensation reinstituted after termination, with the Workers' Compensation Commission required to give this hearing request priority consideration over other hearing requests.

Failure to comply with these provisions (as currently opposed to rules regarding termination or suspension of the benefits) results in a 25 percent penalty imposed on the carrier or employer, computed on the amount of benefits withheld in violation of this act. The bill also deletes a provision under which, currently, the penalty does not apply if the employer or carrier has terminated or suspended benefits when the employee has returned to any employment at the same or similar wage.

Presumption of Disability (H. 3838, House Labor, Commerce and Industry Committee). This bill provides that when a person has 50 percent or more loss of use of his back, then he is presumed, rather than "deemed", to have suffered total and permanent disability, thus making him eligible for such worker's compensation benefits. The bill also specifies that the presumption of total and permanent disability due to 50 percent or more loss of use of the person's back may be rebutted by a preponderance of the evidence.

Reproduction of Banking Records (H. 3839, House Labor, Commerce and Industry Committee). Current law allows depository institutions such as banks to permit copying or reproduction of promissory notes and records kept by the institution through a photostatic, photographic or microfilming process, with the institution (following such copying or reproduction) allowed to dispose of the original record. This bill (identical to H. 3496) expands these provisions so that any corporation, institution or association whose deposits are federally-insured, or any agency or nonprofit organization designated by the State to originate or hold educational loans made to or on behalf of students, may permit the copying or reproduction of promissory notes, checks, drafts and records kept by the entity. In addition to currently permitted means (such as microfilming), reproduction may be accomplished through electronic graphic imaging (scanning, digitizing or other means), and the printed reproduction is considered an original record for all purposes. The bill also adds two requirements, for purposes of admissibility into evidence in courts or administrative agencies, which must be met for the reproduction to be treated as an original: (1) the original document otherwise qualifies as a business records pursuant to the South

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Carolina Uniform Business Records as Evidence Act or the appropriate state or federal rules of evidence, and (2) a custodian or other qualified witness (as the terms are used in appropriate state or federal rules of evidence) certifies that the printed reproduction is a true and correct copy of the original.

Submission of Banking Reports (H. 3840, House Labor, Commerce and Industry Committee). Current law requires institutions doing business in South Carolina in lending money and receiving deposits, under acts of incorporation granted by the State, to publish, when and as called for by the State Board of Financial Institutions, statements of their financial condition in a newspaper wherein the banking institution is located. This bill deletes that publishing requirement, instead requiring the institution to provide these statements when and as called for by the State Board. The bill also requires the Board to accept in lieu of that report a report of condition filed with the federal banking agencies (currently the Board may accept in lieu of the required report a Federal Deposit Insurance Corporation Report).

This bill also requires the financial statements to be sent to the State Board of Financial Institution within 30 days of the statement date requested (as currently opposed to within 10 days from the date they are delivered to the newspaper) and deletes a requirement that branch banks publish statements of their assets and liabilities in counties where these branches are located.

Total copies 570
Total cost \$ 279.30
Cost per copy \$.49
Date 3-28-95
S. C. Legislative Council